

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

CITY OF INDUSTRY,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF LOS ANGELES,

Respondent;

CAROL STOCKWELL,

Real Party in Interest.

B156271

(Los Angeles County
Super. Ct. No. KC 036604)

ORIGINAL PROCEEDING; petition for writ of mandate. Andria K. Richey, Judge.
Petition granted.

Cihigoyeneteche, Grossberg & Clouse, Jean Cihigoyeneteche and Javan N. Rad, for
Petitioner

No appearance for Respondent.

Law Office of Kenneth L. Gibson and Kenneth L. Gibson, for Real Party in Interest.

INTRODUCTION

Petitioner, the City of Industry (City), filed a petition for writ of mandate contesting a December 31, 2001 order granting real party in interest Carol Stockwell's Government Code section 946.6 petition for relief from the requirements of the Tort Claims Act (Gov. Code, § 900 et seq.).¹ The court had entered judgment for the City on November 5, 2001, after sustaining its demurrer without leave to amend on October 10, 2001. Following the court's December 31, 2001 order, real party commenced a second lawsuit on the same allegations as contained in the complaint on which judgment had been entered in favor of petitioner. We find the court to have been without jurisdiction to enter the December 31, 2001 order, and consequently grant the petition.

GOVERNING STATUTES

A city is a "local public entity" governed by the Tort Claims Act (the Act). (Gov. Code, § 900.4.) The Act requires, as a condition precedent to filing a complaint for money or damages against a public entity, that the plaintiff have made a timely claim with the public entity, and that the claim either have been acted upon or deemed to have been rejected. (*Hart v. County of Alameda* (1999) 76 Cal.App.4th 766, 788; Gov. Code, §§ 905, 945.4.) The purpose of this requirement is to allow the public entity to investigate a claim while the evidence is fresh, to settle a meritorious claim without litigation, and to consider fiscal implications of potential liability. (*Hochfelder v. Los Angeles County* (1954) 126 Cal.App.2d 370, 374.) The filing of a timely claim is an integral part of a plaintiff's cause of action. (*Williams v. Horvath* (1976) 16 Cal.3d 834, 842.)

A claim for personal injuries must be filed with a public entity within six months of accrual of a cause of action. (Gov. Code, § 911.2.) If a personal injury claim is not filed within the required time, the claimant may, within a reasonable time, not to exceed one year from accrual, apply to the local public entity for leave to file a late claim. (Gov. Code, § 911.4.)

¹ All further statutory references will be to the Government Code unless otherwise indicated.

A local public entity has 45 days in which to act on an application to file a late claim. (Gov. Code, § 911.6.) If there is no action at the end of 45 days, the application is deemed to have been denied by operation of law. If the local public entity formally denies the application to file a late claim, it is required to include in its denial notice a warning that as a condition precedent to filing a court action, the claimant is required to petition the court for a relief from the claims presentation requirement. (Gov. Code, § 911.8.) A petition for relief from the necessity of first having filed a claim with the local public entity and having had the claim rejected, requires a statement that an application for leave to file a late claim had been made and had been rejected by the public entity. (Gov. Code, § 946.6.)²

² Section 946.6 provided in 2001: “(a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a court which would be a competent court for the trial of an action on the cause of action to which the claim relates is located in a county or judicial district which would be a proper place for the trial of the action, and if the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court. [¶] (b) The petition shall show each of the following: [¶] (1) That application was made to the board under Section 911.4 and was denied or deemed denied. [¶] (2) The reason for failure to present the claim within the time limit specified in Section 911.2. [¶] (3) The information required by Section 910. [¶] The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6. [¶] (c) The court shall relieve the petitioner from Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable: [¶] (1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from Section 945.4. [¶] (2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim. [¶] (3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time. [¶] (4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim. . . . [¶] (e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition. [¶] (f) If the court

SUMMARY OF FACTS AND PROCEDURE

Real party alleged, in a civil complaint filed August 6, 2001, that on or about August 8, 2002, she had been injured by a dangerous condition in a bathroom in a building owned by petitioner, the City of Industry. On August 8, 2001, the same day that she filed her civil complaint, real party filed a petition with the City for leave to file a late claim, accompanied by the claim.³ Petitioner filed a demurrer to the complaint on September 5, 2001, on grounds of lack of jurisdiction and failure to state a cause of action due to real party's non-compliance with the Act. Hearing on the demurrer was calendared for October 5, 2001. The hearing was apparently continued to October 10, 2001.

Real party's application to file a late claim was denied by petitioner by operation of law on September 24, 2001, 45 days after its filing. (Gov. Code, § 911.6.)

On September 27, 2001, real party opposed the demurrer with a declaration of counsel, attached to which was real party's application to file a late claim and the late claim. At the same time, real party also filed a "Petition to the Court for Relief from Denial of a Late Claim" without citation to any statutory authority, and a memorandum of points and authorities in opposition to the demurrer and in support of the "Petition to be Relieved from the Denial of the Late Claim", citing sections 945.4⁴ and 911.6⁵ as authority that an excusable mistake is grounds for relief from claims presentation requirements.

makes an order relieving the petitioner from Section 945. 4, suit on the cause of action to which the claim relates shall be filed with the court within 30 days thereafter."

³ The document real party filed with the City could properly be considered as an application for leave to file a late claim, notwithstanding being unsigned. In the application for leave to file a late claim petitioner explained that she had not filed a civil complaint against the City because until June 1, 2001 she had thought that her remedies were limited to workers' compensation against her employer.

⁴ Section 945.4 states: "Except as provided in Sections 946.4 and 946.6, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefore has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by he board, in accordance with Chapters I and 2 of Part 3 of this division."

On October 10, 2001, the court sustained petitioner's demurrer, without leave to amend, on the ground that real party had failed to comply with the Act's mandatory requirements. On October 16, 2001, petitioner served a notice of ruling stating that the court had sustained the demurrer without leave to amend, and also served a proposed judgment on demurrer. On November 5, 2001, the court signed the proposed judgment, deleting the word "proposed," and ordering that judgment be entered in favor of petitioner. A copy of the signed judgment was filed the same day.⁶

On November 26, 2001, three weeks after the court signed the judgment, real party filed a petition under section 946.6 for relief from the Act's claims presentation requirement, and set a December 28, 2001 hearing date on the petition. The petition was supported by a declaration of counsel and a memorandum of points and authorities, and reiterated the argument of mistake and excusable neglect made in the earlier petition, with citation to section 946.6, the appropriate statutory authority, and a more reasoned argument.

In response, petitioner filed opposition contending that the court was without jurisdiction to entertain the petition, since judgment in its favor had been ordered entered on

⁵ Section 911.6 states, in pertinent part, with respect to decisions of public entities to grant or deny an application to file a late claim:

- (a) The board shall grant or deny the application with 45 days after it is presented to the board. The claimant and the board may extend the period in which the board is required to act on the application by written agreement before the expiration of the period.
- (b) The board shall grant the application where one or more of the following is applicable:
 - (1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in defense of the claim by the failure to present the claim within the time specified in Section 911.2. . . ."

⁶ A judgment is "the final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) Entering the judgment was a ministerial act. It is presumed to have been performed. (Evid. Code, § 664.)

November 5, 2001, and real party had not sought relief from the judgment. Petitioner also addressed the merits of real party's petition, maintaining that real party had not filed with it a valid application to file a late claim, a requirement of a section 946.6 petition, and that real party's section 946.6 petition failed to show that she had exercised the diligence necessary to merit relief.

The court's tentative decision was to deny the petition on the merits. The argument at the hearing exclusively addressed whether real party had acted with reasonable diligence in filing her late claim against petitioner, and whether petitioner would be prejudiced by real party's delay. The court took that matter under submission.

In a December 31, 2001 minute order the court addressed the merits of real party's petition, and granted real party's relief from the Act's claim presentation requirements. The minute order did not address the effect of judgment having been entered eight weeks earlier.

On January 10, 2002, under a new case number, real party filed a complaint alleging the same August 8, 2000 injuries that were the subject of the initial complaint.⁷ The first paragraph of the new complaint alleges: "On 12-31-2001, Plaintiff's Petition for Relief from the Claim Requirement was granted by the Court."

On February 6, 2002, the City filed a petition for writ of mandate. On February 20, 2002 we issued an order indicating our inclination to issue a peremptory writ of mandate in the first instance (Code Civ. Proc., §1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180), and subsequently received briefing from petitioner and real party.

DISCUSSION

Petitioner contends that the trial court was without jurisdiction to issue its December 31, 2001 post-judgment order granting real party relief from the claims presentation requirement of the Act. Real party offers no substantive opposition.

We agree with petitioner that the court lacked jurisdiction to grant real party's section 946.6 petition in light of an extant judgment. Once judgment was entered, the court had no jurisdiction to consider real party's section 946.6 petition. "A court may reconsider its

⁷ Real party apparently attempted to file the complaint under the original case number, but the pleading was given a new case number by the clerk.

order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the trial court may not reconsider it and loses its unrestricted power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment.” (APRI Ins. Co. v. Superior Court (1999) 76 Cal.App.4th 176, 181, quoting *Passavanti v. Williams* (1990) 225 Cal.App.3d 1602, 1606.)

DISPOSITION

This is a proper case for issuance of a peremptory writ in the first instance. (Code Civ. Proc., §1088; *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.)

Let a writ of mandate issue, directing the respondent court to vacate its order of December 31, 2001, granting real party’s petition for relief under Government Code section 946.6, and to issue a new order, denying the petition. Petitioner to recover its costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST